

**Custom Masonry of Topeka, Inc. and Bricklayers  
Local Union No. 3, affiliated with Bricklayers,  
Masons & Plasterers International Union of  
America. Case 17-CA-11519**

25 March 1984

**DECISION AND ORDER**

**BY CHAIRMAN DOTSON AND MEMBERS  
HUNTER AND DENNIS**

On 30 December 1983 Administrative Law Judge Steven M. Charno issued the attached decision. The General Counsel filed exceptions.<sup>1</sup>

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Custom Masonry of Topeka, Inc., Topeka, Kansas, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 2(a) and re-letter the subsequent paragraphs.

"(a) Promptly provide the above-named labor organization with the information requested in its letters of 22 February and 4 March 1983."

2. Substitute the attached notice for that of the administrative law judge.

<sup>1</sup> We adopt pro forma in the absence of exceptions the judge's findings that the Respondent violated Sec. 8(a)(5) and (1) of the Act by failing to furnish the Union certain requested information. Only the General Counsel has filed exceptions, which are limited to the judge's inadvertent failure to provide an affirmative remedy for the violation found. In the absence of exceptions to the judge's substantive findings, we shall modify the judge's recommended Order accordingly.

**APPENDIX**

**NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government**

WE WILL NOT refuse to supply information requested by the Bricklayers Local Union No. 3, affiliated with Bricklayers, Masons & Plasterers International Union of America, when such information is necessary to the Union's performance of

its function as your exclusive collective-bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL promptly provide the above-named labor organization with the information requested in its letters of 22 February and 4 March 1983.

**CUSTOM MASONRY OF TOPEKA, INC.**

**DECISION**

STEVEN M. CHARNO, Administrative Law Judge. In response to a charge filed March 11, 1983, a complaint issued on April 27, 1983, alleging that Custom Masonry of Topeka, Inc. (the Respondent) had violated Section 8(a)(1) and (5) of the National Labor Relations Act by refusing to supply information to the Bricklayers Local Union No. 3, affiliated with Bricklayers, Masons & Plasterers International Union of America (the Union). The Respondent's answer denied the commission of any unfair labor practice.<sup>1</sup>

The hearing was held before me in Kansas City, Kansas, on July 7, 1983.<sup>2</sup> At the close of the hearing, the parties were ordered to file briefs on or before August 11, 1983. The General Counsel did so, but the Respondent did not file a brief until August 30, 1983. After the General Counsel filed a motion to strike the Respondent's brief as untimely, counsel for the Respondent submitted a motion on September 29, 1983, stating that his client had instructed him not to file a brief for financial reasons and that he sought permission to submit a late filed brief pro bono. The General Counsel opposed the motion. No prejudice to the General Counsel being apparent, I conclude that the interests of justice require that the Respondent's motion be granted and its brief be received.

**FINDINGS OF FACT**

**1. JURISDICTION**

The Respondent is a Kansas corporation with offices in Topeka which is engaged as a masonry contractor in the building and construction industry. During the year ending December 31, 1982, the Respondent, in the course and conduct of its operations within Kansas, provided goods and services valued in excess of \$50,000 for Phil Morse Homes, Inc., Joe Pashman Construction, and R.A. Fulmer. All three firms had offices in Topeka and engaged in the construction and retail sale of family residences and related housing units. During the year ending December 31, 1982, these three firms, in the course and conduct of their respective operations, each derived gross revenues in excess of \$500,000 and purchased

<sup>1</sup> While the Respondent asserted in its answer that it did not do sufficient business to fall within the Act's jurisdictional standards, it abandoned this affirmative defense at the hearing.

<sup>2</sup> Certain errors in the transcript are hereby noted and corrected.

goods and services valued in excess of \$5000 from sources outside Kansas. It was jointly stipulated, and I find, that the Respondent is an employer engaged in commerce within the meaning of the Act.

The Union was jointly stipulated to be, and I find is, a labor organization within the meaning of the Act.

## II. THE ALLEGED UNFAIR LABOR PRACTICES

### A. Stipulations<sup>3</sup>

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All bricklayer employees of the Respondent, except project engineers, clerical employees, guards, watchmen, timekeepers, superintendents and assistant superintendents.

Since March 23, 1981, the Union has been the designated exclusive collective-bargaining representative of the above-described unit and has been recognized as such by the Respondent. By virtue of Section 9(a) of the Act, the Respondent has been the exclusive representative of the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment since March 23, 1981.

By letter dated February 22, 1983, the Union asked the Respondent to furnish the following information:

Copies of all payroll records showing the name and address of every employee employed by Custom Masonry, Inc. since its inception; the total number of hours worked by each employee on each project for Custom Masonry, Inc.; the hourly wage paid to each such employee; the total wages paid to each employee per week and per day; the total amount of fringes per day and per week paid for each employee on each such project; any other documents or computer printouts which will show the terms and conditions of employment actually afforded to the employees of Custom Masonry, Inc. covered by its collective bargaining agreement with Bricklayers Local Union No. 3.

By letter of March 4, 1983, the Union requested the following additional information:

... the names and addresses of all companies in which you have any interest, or for whom you have been employed in the past six (6) months. ... the name and address and of any bricklaying or masonry company in which you or any member of your family has any ownership interest whatsoever.

Since March 11, 1983, the Respondent has failed and refused to furnish the information requested in either letter.

<sup>3</sup> All of the findings in this section are based on joint stipulations by the parties.

### B. Testimony and Exhibits

In response to a telephone request from Elmer Rogers, the Union's business manager, the Respondent's president, Matthew Devlin, visited the Union's offices about March 23, 1981. At that time, Devlin admittedly signed the signature page of a collective-bargaining agreement between the Union and the Associated General Contractors of Northeast Kansas, Inc. (AGC). That agreement by its terms was effective from April 4, 1978, through March 31, 1981.

Again in response to a telephone request from Rogers, Devlin went to the Union's offices about July 27, 1981. Rogers told Devlin that the latter must sign a document which was the signature page of a new collective-bargaining agreement between the AGC and the Union. This agreement was effective by its terms from April 20, 1981, through March 31, 1984. Devlin admittedly signed at least one such signature page on this occasion,<sup>4</sup> but he was not shown or given a copy of the agreement.<sup>5</sup>

It is undisputed that during 1981 and 1982 the Respondent paid the scale of wages and remitted to the Kansas Construction Trades Fringe Benefit Funds all amounts required by the successive collective-bargaining agreements. When an addendum was executed by the AGC and the Union on March 26, 1982, the Respondent increased its fringe benefit remittances as required by the addendum. Devlin testified credibly that he was informed by telephone calls from the Union of the amounts he was required to pay. At the end of 1982, the Respondent ceased paying the scale of wages and making the fringe benefit remittances required by the collective-bargaining agreement then in effect. The Union became aware of this and, on February 4, 1983, filed unfair labor practice charges alleging that the Respondent had unilaterally abrogated the collective-bargaining agreement and had discriminatorily discharged certain employees. These charges were withdrawn due to the reluctance of the Respondent's employees to participate in the subsequent investigation. Thereafter, the

<sup>4</sup> Devlin admitted that his signature appears on the signature page which was received in evidence as J. Exh. 5. The Respondent makes much on brief of the fact that Devlin denied his signature on a comparable signature page, G.C. Exh. 3. Given Devlin's admission that he signed one signature page, any determination of whether he signed a second such page is immaterial and unnecessary.

<sup>5</sup> Devlin testified that he was not given a copy of the agreement between the AGC and the Union in either March or July. While Rogers denied this, his testimony of what occurred on these occasions was replete with inconsistencies and retractions. On direct examination, Rogers gave detailed and almost identical descriptions of what took place at each meeting. On cross-examination, Rogers admitted that he was not sure of anything which had occurred at those meetings except that Devlin had signed the signature page of a collective-bargaining agreement on each occasion. For the foregoing reasons and based on my observation of the demeanor of both witnesses while they testified, I credit Devlin over Rogers on this point. I do not, however, credit Devlin's testimony that he had no idea what he was signing in either March or July. Devlin justified his purported lack of knowledge by explaining that the signature page he signed belonged to a contract which was still "under negotiation at that time." While this justification may have relevance with respect to the July incident, it cannot have been true with respect to the March meeting since the contract involved at that time had been in effect since 1978.

Union made the two requests for information described above.

### C. Discussion

The Respondent argues that, while it may have had a collective-bargaining relationship with the Union at the time the latter requested information, no collective-bargaining agreement between the Respondent and the Union existed at that time. Based on this premise, the Respondent further argues that it could not be under a legal obligation to provide the Union with information necessary to administer a nonexistent agreement. The General Counsel demurs. The question of whether a collective-bargaining agreement exists is one of fact. *Universal Camera Corp. v. NLRB*, 340 U.S. 474 (1951); *Shawn's Launch Service*, 261 NLRB 836 (1982). Here, the Respondent's president visited the Union's offices on two occasions and executed the signature pages of two successive collective-bargaining agreements. I conclude that his failure to demand or receive copies of those agreements does not demonstrate the absence of an intention to enter binding contracts as argued by the Respondent, but rather that Devlin's conduct evidenced an intention to be bound by any terms and conditions which would allow the Respondent to continue to do business. This conclusion is supported by the fact that the Respondent complied with the terms of the second collective-bargaining agreement which Devlin signed for a period of almost 18 months. I therefore find that a collective-bargaining agreement was in effect between the Respondent and the Union at all times relevant herein.

Since I have found that a contractual relationship existed between the Respondent and the Union, the only other question to be answered is whether the information sought by the Union was necessary for and relevant to the performance of its function as the exclusive bargaining representative for certain of the Respondent's employees. While the Respondent refused to so stipulate, this question was not addressed by the Respondent's brief. The wage and related information concerning the Respondent's employees which the Union requested on February 22 is presumptively relevant since it concerns the core of the employer-employee relationship, and a showing of its precise relevance is unnecessary in the absence of a rebuttal of this presumption by Respondent. See, e.g., *M. E. Carter & Co.*, 223 NLRB 506, 512 (1976); *Cowles Communications*, 172 NLRB 1909 (1968). Even in the absence of such a presumption, I would infer that the requested information was relevant to and necessary for administration of the collective-bargaining agreement then in effect between the Respondent and the Union from the nature of the information sought and the fact that it was requested after the Respondent concededly ceased to comply with the agreement and immediately after the Union charged the Respondent with unilaterally abrogating the agreement. The information requested in the Union's March 4 letter is relevant under the "discovery-type" standard applicable to requests for information concerning matters other than wages and related information. See *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437-438 (1967); *Associated General Contractors of Califor-*

*nia*, 242 NLRB 891, 894 (1979), *enfd.* 633 F.2d 766 (9th Cir. 1980).

Accordingly, I find that the Respondent's refusals to provide the information requested by the Union on February 22 and March 4, 1983, constitute refusals to bargain collectively and in good faith with the representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

### CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. All bricklayer employees of the Respondent, except project engineers, clerical employees, guards, watchmen, timekeepers, superintendents and assistant superintendents, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times relevant herein, the Union has been the exclusive representative of the employees in said unit for purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing to supply information requested by the Union which was necessary for and relevant to the Union's performance of its function as the exclusive collective-bargaining representative of the employees in said unit, the Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) and (5) of the Act.

6. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record in this case, I issue the following recommended<sup>6</sup>

### ORDER

The Respondent, Custom Masonry of Topeka, Inc., Topeka, Kansas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to provide information requested by the Union necessary for and relevant to the Union's performance of its function as the exclusive collective-bargaining representative of the Respondent's bargaining unit employees.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights to engage in or refrain from engaging in any or all of the activities specified in Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act.

<sup>6</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Post at its Topeka, Kansas offices copies of the attached notice marked "Appendix."<sup>7</sup> Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be posted by it immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be

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<sup>7</sup> If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that:

1. The General Counsel's "Motion to Strike Respondent's Brief to the Administrative Law Judge" of September 2, 1983, be and it is hereby denied.

2. The Respondent's motion of September 29, 1983 be and it is hereby granted.

3. The cross-motions of the General Counsel and the Respondent for summary disposition be and they are hereby denied.